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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,552	11/25/2003	Jean-Louis Gueret	NONY 3.0-015	5845
530 7590 01/11/2007 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			EXAMINER MANAHAN, TODD E	
			ART UNIT	PAPER NUMBER
			3732	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/11/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/721,552

Applicant(s)

GUERET, JEAN-LOUIS

Examiner

Todd E. Manahan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5-11, 16-18, 29-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ennio (French Patent No. 2,798,267).

Ennio discloses an applicator comprising a rod 4 having a longitudinal axis and an end extending along the longitudinal axis. A brush 5 is fixed to the end of the rod. The brush comprises a twisted wire core 51 and a plurality of bristle. The twisted wire core is bent such that substantially all points of the bristle carrying portion make a non-zero angle relative to the longitudinal axis of the rod (see figure 5). Ennio discloses the claimed invention except for the specific angle the bristle carrying portion makes relative to the longitudinal axis of the rod. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the bristle carrying portion make an angle of between 0.2 and 20 degrees relative to the longitudinal axis of the rod, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Claims 2-4, 12-15, 19-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ennio as applied to claim 1 above, and further in view of Gueret (United States Patent No. 5,918,994).

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Gueret discloses various mascara brushes having non-circular cross sections; longitudinal ribs; plane surfaces; concave surfaces; constant cross sections; varying cross sections; and cross sections that vary in size, but not shape. It would have been obvious to one skilled in the art to form the brush of Ennio with the bristles forming an envelope having non-circular cross sections; longitudinal ribs; plane surfaces; concave surfaces; constant cross sections; varying cross sections; and cross sections that vary in size, but not shape in view of Gueret in order to obtain a make-up which is full-bodied, regular, elongated and curls.

Claims 1-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret (USP 5,918,994) in view of Ennio.

Gueret discloses the invention essentially as claimed except for the bristle carrying portion making an angle relative to the longitudinal axis of the rod. Ennio discloses it is known in the art to form a mascara applicator with the bristle portion making an angle with respect to the longitudinal axis of the rod so that the bristles engage the inner wall of the container as the applicator is withdrawn. It would have been obvious to one skilled in the art to have the bristle carrying portion of Gueret form an angle relative to the longitudinal axis of the rod in view of Ennio in order to have the applicator contact the inner wall of the receptacle as the applicator is withdrawn. It would have been further obvious to one having ordinary skill in the art at the time the invention was made to have the bristle carrying portion make an angle of between 0.2 and 20 degrees relative to the longitudinal axis of the rod, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

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***Response to Arguments***

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's arguments that Ennio does not disclose what angle the brush is positioned relative to the rod, it is noted that the rejections of the claims based upon Ennio were obviousness rejections based upon case law which states that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. The general conditions of the claim are disclosed by Ennio and thus it is within the level of one skilled in the art to find optimum or workable ranges for the angle.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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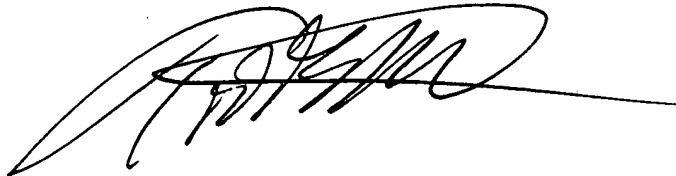
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd E. Manahan whose telephone number is 571 272- 4713. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Rodriguez can be reached on 571 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Todd E. Manahan  
Primary Examiner  
Art Unit 3732

T.E. Manahan  
5 January 2007

A handwritten signature in black ink, appearing to read 'T.E. Manahan', with a long horizontal flourish extending to the right.

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Todd E. Manahan  
Primary Examiner  
Art Unit 3732

T.E. Manahan  
5 January 2007

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